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FILED
STATE OF CALIFORNIA
PHYSICAL THERAPY BOARD OF CALIFORNIA
SACRAMENTO, CA July 22, 2013
BY C. Sacramento ANALYST

8
9 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 1D-2012-71610

12 **STEPHEN JOHN MATHER, PT**
13 21 Cordelia Drive
14 Petaluma, CA 94952

A C C U S A T I O N

15 Physical Therapist License No. PT 17387,
16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

- 20 1. Jason Kaiser (Complainant) brings this Accusation solely in his official capacity as
21 the Executive Officer of the Physical Therapy Board of California (Board).
22 2. On or about April 22, 1991, the Board issued Physical Therapist License number PT
23 17387 to Stephen John Mather, PT (Respondent). That license was in full force and effect at all
24 times relevant to the charges brought herein. Said license expired on December 31, 2012, and is
25 now delinquent.

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1 “(k) The commission of any fraudulent, dishonest, or corrupt act that is substantially related
2 to the qualifications, functions, or duties of a physical therapist or physical therapist assistant.

3 “(l) Except for good cause, the knowing failure to protect patients by failing to follow
4 infection control guidelines of the board, thereby risking transmission of blood-borne infectious
5 diseases from licensee to patient, from patient to patient, and from patient to licensee. In
6 administering this subdivision, the board shall consider referencing the standards, regulations, and
7 guidelines of the State Department of Public Health developed pursuant to Section 1250.11 of the
8 Health and Safety Code and the standards, regulations, and guidelines pursuant to the California
9 Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300) of Division
10 5 of the Labor Code) for preventing the transmission of HIV, hepatitis B, and other blood-borne
11 pathogens in health care settings. As necessary, the board shall consult with the Medical Board
12 of California, the California Board of Podiatric Medicine, the Dental Board of California, the
13 Board of Registered Nursing, and the Board of Vocational Nursing and Psychiatric Technicians
14 of the State of California, to encourage appropriate consistency in the implementation of this
15 subdivision.

16 The board shall seek to ensure that licensees are informed of the responsibility of licensees
17 and others to follow infection control guidelines, and of the most recent scientifically recognized
18 safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

19 “(m) The commission of verbal abuse or sexual harassment.

20 5. Section 2661.5 of the Code states:

21 “(a) In any order issued in resolution of a disciplinary proceeding before the board, the
22 board may request the administrative law judge to direct any licensee found guilty of
23 unprofessional conduct to pay to the board a sum not to exceed the actual and reasonable costs of
24 the investigation and prosecution of the case.

25 “(b) The costs to be assessed shall be fixed by the administrative law judge and shall not in
26 any event be increased by the board. When the board does not adopt a proposed decision and
27 remands the case to an administrative law judge, the administrative law judge shall not increase
28 the amount of the assessed costs specified in the proposed decision.

1 "(c) When the payment directed in an order for payment of costs is not made by the
2 licensee, the board may enforce the order of payment by bringing an action in any appropriate
3 court. This right of enforcement shall be in addition to any other rights the board may have as to
4 any licensee directed to pay costs.

5 "(d) In any judicial action for the recovery of costs, proof of the board's decision shall be
6 conclusive proof of the validity of the order of payment and the terms for payment.

7 "(e) (1) Except as provided in paragraph (2), the board shall not renew or reinstate the
8 license or approval of any person who has failed to pay all of the costs ordered under this section.

9 "(2) Notwithstanding paragraph (1), the board may, in its discretion, conditionally renew or
10 reinstate for a maximum of one year the license or approval of any person who demonstrates
11 financial hardship and who enters into a formal agreement with the board to reimburse the board
12 within that one year period for those unpaid costs.

13 "(f) All costs recovered under this section shall be deposited in the Physical Therapy Fund
14 as a reimbursement in either the fiscal year in which the costs are actually recovered or the
15 previous fiscal year, as the board may direct."

16 6. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
17 administrative law judge to direct a licentiate found to have committed a violation or violations of
18 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
19 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
20 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
21 included in a stipulated settlement.

22 7. Section 490 of the Code states:

23 "(a) In addition to any other action that a board is permitted to take against a licensee, a
24 board may suspend or revoke a license on the ground that the licensee has been convicted of a
25 crime, if the crime is substantially related to the qualifications, functions, or duties of the business
26 or profession for which the license was issued.

27 "(b) Notwithstanding any other provision of law, a board may exercise any authority to
28 discipline a licensee for conviction of a crime that is independent of the authority granted under

1 subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties
2 of the business or profession for which the licensee's license was issued.

3 "(c) A conviction within the meaning of this section means a plea or verdict of guilty or a
4 conviction following a plea of nolo contendere. Any action that a board is permitted to take
5 following the establishment of a conviction may be taken when the time for appeal has elapsed, or
6 the judgment of conviction has been affirmed on appeal, or when an order granting probation is
7 made suspending the imposition of sentence, irrespective of a subsequent order under the
8 provisions of Section 1203.4 of the Penal Code.

9 "(d) The Legislature hereby finds and declares that the application of this section has been
10 made unclear by the holding in *Petropoulos v. Department of Real Estate* (2006) 142 Cal.App.4th
11 554, and that the holding in that case has placed a significant number of statutes and regulations
12 in question, resulting in potential harm to the consumers of California from licensees who have
13 been convicted of crimes. Therefore, the Legislature finds and declares that this section
14 establishes an independent basis for a board to impose discipline upon a licensee, and that the
15 amendments to this section made by Senate Bill 797 of the 2007-08 Regular Session do not
16 constitute a change to, but rather are declaratory of, existing law."

17 8. Section 493 of the Code states:

18 "Notwithstanding any other provision of law, in a proceeding conducted by a board within
19 the department pursuant to law to deny an application for a license or to suspend or revoke a
20 license or otherwise take disciplinary action against a person who holds a license, upon the
21 ground that the applicant or the licensee has been convicted of a crime substantially related to the
22 qualifications, functions, and duties of the licensee in question, the record of conviction of the
23 crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact,
24 and the board may inquire into the circumstances surrounding the commission of the crime in
25 order to fix the degree of discipline or to determine if the conviction is substantially related to the
26 qualifications, functions, and duties of the licensee in question.

27 "As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and
28 'registration.'"

1 9. Section 2661 of the Code states:

2 "A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
3 charge of a felony or of any offense which substantially relates to the qualifications, functions, or
4 duties of a physical therapist is deemed to be a conviction within the meaning of this article. The
5 board may order the license suspended or revoked, or may decline to issue a license, when the
6 time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when
7 an order granting probation is made suspending the imposition of sentence, irrespective of a
8 subsequent order under Section 1203.4 of the Penal Code allowing that person to withdraw his or
9 her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or
10 dismissing the accusation, information, or indictment."

11 10. Section 2239 of the Code states:

12 "(a) The use or prescribing for or administering to himself or herself, of any controlled
13 substance; or the use of any of the dangerous drugs specified in Section 4022, or of alcoholic
14 beverages, to the extent, or in such a manner as to be dangerous or injurious to the licensee, or to
15 any other person or to the public, or to the extent that such use impairs the ability of the licensee
16 to practice medicine safely or more than one misdemeanor or any felony involving the use,
17 consumption, or self-administration of any of the substances referred to in this section, or any
18 combination thereof, constitutes unprofessional conduct. The record of the conviction is
19 conclusive evidence of such unprofessional conduct.

20 "(b) A plea or verdict of guilty or a conviction following a plea of nolo contendere is
21 deemed to be a conviction within the meaning of this section. The Division of Medical Quality
22 may order discipline of the licensee in accordance with Section 2227 or the Division of Licensing
23 may order the denial of the license when the time for appeal has elapsed or the judgment of
24 conviction has been affirmed on appeal or when an order granting probation is made suspending
25 imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4
26 of the Penal Code allowing such person to withdraw his or her plea of guilty and to enter a plea of
27 not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint,
28 information, or indictment."

1 11. California Code of Regulations, title 16, section 1399.20, states:

2 "For the purposes of denial, suspension or revocation of a license, pursuant to Division 1.5
3 (commencing with Section 475) of the code, a crime or act shall be considered to be substantially
4 related to the qualifications, functions or duties of a person holding a license under the Physical
5 Therapy Practice Act if to a substantial degree it evidences present or potential unfitness of a
6 person to perform the functions authorized by the license or approval in a manner consistent with
7 the public health, safety or welfare. Such crimes or acts shall include but not be limited to the
8 following:

9 "(a) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the
10 violation of, or conspiring to violate any provision or term of the Physical Therapy Practice Act.

11 "(b) Conviction of a crime involving fiscal dishonesty arising out of or in connection with
12 the practice of physical therapy.

13 "(c) Violating or attempting to violate any provision or term of the Medical Practice Act."

14 **FIRST CAUSE FOR DISCIPLINE**

15 **[Bus. & Prof. Code §§ 493; 2660, subd. (d); and 2661]**
16 **(Conviction of a Crime)**

17 12. Respondent is subject to disciplinary action under sections 493, 2660, subdivision (d),
18 and 2661 in that he was convicted of a crime which is substantially related to the qualifications,
19 functions or duties of his profession. The circumstances are as follows:

20 13 On October 15, 2011, at approximately 4:10 in the afternoon, Petaluma Police
21 Department officers responded to a traffic accident in Petaluma. Respondent was contacted at the
22 scene, was identified, and admitted to being the driver of the vehicle that had collided with a
23 parked car.

24 14. Respondent smelled of alcohol and admitted to police that he had been drinking
25 earlier in the day. Field sobriety tests were administered which Respondent failed. Respondent
26 was transported to the Petaluma Police Department and submitted to a breathalyzer test. The first
27 test showed Respondent's blood-alcohol concentration to be .34 percent; the second was .32
28 percent.

15. On or about November 28, 2011, Respondent was convicted by no contest plea in Sonoma County Superior Court case number SCR-609033 of a violation of Vehicle Code section 23152 (b), driving a motor vehicle with a blood alcohol level of .08 or higher. Respondent further plead no contest to the enhancement under Vehicle Code section 23538 (b)(2) that his blood-alcohol concentration at the time he was driving was over .20 percent.

16. Respondent's conduct as described above constitutes unprofessional conduct in violation of sections 493, 2239, 2660, subdivision (d), and 2661 of the Code and is cause for discipline against Respondent's license.

SECOND CAUSE FOR DISCIPLINE

[Bus. & Prof. Code § 2239]

(Excessive Use of Alcohol)

17. Respondent is subject to disciplinary action under section 2239 of the Code in that he used alcohol in a manner dangerous to himself or others. The circumstances are as follows:

18. Complainant repeats paragraphs 13 through 15 above as if fully set forth here.

19. Respondent's conduct as described above constitutes unprofessional conduct for the excessive use of alcohol in violation of section 2239 of the Code and is cause for discipline against Respondent's license.

THIRD CAUSE FOR DISCIPLINE

[Bus. & Prof. Code § 2660, subd. (e)]

(Habitual Intemperance)

20. Respondent is subject to disciplinary action under section 2660, subdivision (e) of the Code in that his blood-alcohol concentration at his arrest demonstrates habitual intemperance with alcohol. The circumstances are as follows:

21. Complainant repeats paragraphs 13 through 15 above as if fully set forth here.

22. Respondent's conduct as described above constitutes unprofessional conduct in violation of section 2660, subdivision (e) of the Code and is cause for discipline against Respondent's license.

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1 PRAYER

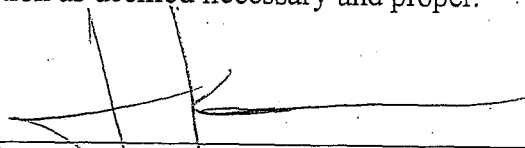
2 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
3 and that following the hearing, the Physical Therapy Board of California issue a decision:

4 1. Revoking or suspending Physical Therapist License Number PT 17387, issued to
5 Stephen John Mather, PT;

6 2. Ordering him to pay the Physical Therapy Board of California the reasonable costs of
7 the investigation and enforcement of this case, pursuant to Business and Professions Code section
8 2661.5;

9 3. Taking such other and further action as deemed necessary and proper.

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11 DATED: July 22, 2013

12 
13 JASON KAISER
14 Executive Officer
Physical Therapy Board of California
Department of Consumer Affairs
State of California

Complainant

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